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No. _____

Supreme Court, U.S.
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IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1990

WILLIAM E. CURRIER and
ROBERT C. BRAUN,

PETITIONERS,

VS.

CHARLES J. BALDRIDGE and
ROBERT DALE OSBORN,

RESPONDENTS.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Was a state standard of individual liability to atone for wrongful arrest breached by summary dismissal of this civil rights violation action?

2. Does an appellate court have power to set a new standard for probable cause to arrest for a criminal charge wherein the accused was acquitted?

3. Has this Appellate Court's refusal to consider unsworn testimonials of Christian activists deprived petitioners of due process of law?

4. Can a process server expect to receive equal protection of the law, i.e. against "unreasonable seizure" by government agents, and the unimpeded "petition for redress" consideration that has been offered others?

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IN THE SUPREME COURT OF THE UNITED STATES

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CHARLES J. BALDRIDGE and
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Respondents.

PETITION FOR WRIT OF CERTIORARI

Petitioners, WILLIAM E. CURRIER and ROBERT C. BRAUN, respectfully pray that a writ of certiorari issue to review the judgment and opinion of the United States Court of Appeals for the Seventh Circuit affirming the dismissal of claims of a violation of rights protected by the First, Fourth and Fourteenth Amendments to the United States Constitution by the United States District Court for the Eastern District of Wisconsin.

OPINIONS BELOW

The Opinion of the Court of Appeals is reported as Currier, et al v. Baldridge, et al, 914 F.2d 993 (7th Cir. 1990), and it appears in Appendix A to this Petition. The unpublished written Opinion of the District Court for the Eastern District of Wisconsin appears in Appendix B to this Petition.

JURISDICTION

The Court of Appeals' Opinion in this matter was filed on October 1, 1990. A timely Petition for Rehearing was filed on November 9, 1990. The Court of Appeals denial of the Petition for Rehearing was issued on December 4, 1990, and is set forth in Appendix C to this Petition. This Court's jurisdiction is invoked under Title 28, U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Wisconsin Statute 947.01

"Disorderly Conduct. Whoever, in a public or private place, engages in violent, abusive, indecent, profane, boisterous, unreasonably loud or otherwise disorderly conduct under circumstances in which the conduct tends to cause or provoke a disturbance is guilty of a Class B misdemeanor."

Wisconsin Statute 801.10(1)

"Summons, Who may serve. An authenticated copy of the summons may be served by an adult resident of the state where service is made who is not a party to the action. Service shall be made with reasonable diligence."

United States Constitution
Amendment I

"Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances."

United States Constitution
Amendment IV

"The right of the people to be secure in their persons, houses, papers, and effects, against

unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized."

United States Constitution
Amendment XIV, Section 1 -

"All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

STATEMENT OF THE CASE

The questions presented are interrelated and necessitate consideration of the combined four arguments to grasp the significance of each. The gravity of these issues suggest a need to address them.

QUESTION 1: The court of first instance was informed of the Wisconsin "rule", i.e.:

> "where an authority given by the law is exceeded, the officer loses the benifit of his jurisdiction, and the law holds him as a trespasser ab initio although to a certain extent he acted under the authority given."

Wallner v. Fidelity and Deposit Co. of Maryland, 253 Wis. 66, 70, 33 N.W.2d 215, 216 (1948)

Notwithstanding respondents' failure to address this concept the courts have not addressed petitioners reliance on this rule.

QUESTION 2: Petitioner Currier was acquitted of the initial arrest charge of Disorderly Conduct in which petitioners argued that malicious intent motivated the arrest and compelled the arresting officer to lie and fabricate the only conceivable act that would provide a ground for that criminal complaint criteria, i.e. violence.

Respondents' arguments relied upon Petitioner Currier's conviction on a second charge of Disorderly Conduct to sustain probable cause to arrest on the initial seizure. They did not argue that:

> "Any physical contact within a courtroom between a police officer and a private citizen would tend 'to cause or provoke a disturbance,'..."

This decree established probable cause to arrest for Disorderly Conduct, at least within the Seventh Circuit. The Court of Appeals ruled sua sponte to create that standard.

QUESTION 3: The initial arrest of petitioner Currier was premised on alleged violence. Petitioners provided eye witness declarations contradicting the claim of violence. Boch lower courts have avoided addressing petitioners' arguments regarding fraud in the inducement of the Criminal Complaint, i.e. falsely swearing that violence was grounds for Currier's seizure arrest. The evidence presented by petitioners, via witness declaration, clearly establishes that these allegations are genuine issues to be desided by a fact finder, yet the courts have ignored these affirmed declarations.

QUESTION 4: FACTS: a) Petitioner Currier was a bona fide process server for a party in a civil suit commenced in a Wisconsin Circuit Court when he was arrested by defendant Charles J. Baldridge on February 19th, 1986. b) Defendant Baldridge had ill will toward Nancy Knies,

the party who had commenced the suit for which process was to be served on him. c) Defendant Baldridge had refused mail service of that very process several days prior to February 19th, 1986. d) Nancy Knies had complained to the City of New Berlin Police Chief about Sgt. Charles J. Baldridge's authoritorian and discourteous conduct prior to February 19, 1986. e) Nancy Knies was sitting a few feet from Sgt. Charles J. Baldridge when petitioner Currier served process on him and he retaliated immediately by seizure arrest of the process server. f) Several eye witnesses who observed this confrontation disputed defendant Baldridge's account of the grounds for defendant Currier's arrest. g) These facts were revealed to the courts below and remain in this Case File in the form of personal Asseverations, i.e. unsworn declarations that were notarized by witnesses on affirmation. h) The courts below never

questioned the authenticity of these sincere declarations, or the status of the admissibility of "asseverations" for considerating sufficient evidence to support a jury verdict. i) The Seventh Circuit Appellate Court determined that:

> "Currier has failed to come forward with sufficient evidence that could support a jury verdict in his favor on an element of his claim for which he would bear the burden of proof at trial."

See the October 1st, 1990 Decision, page 6, ¶ 2, in Appendix A. j) Petitioners are frustrated and perplexed over the unanswered questions that have arrisen as a result of the disparity displayed by the courts below and wish to know what laws apply to them and how they may attempt to seek equal protection of the law.

REASONS FOR GRANTING THE WRIT

The Court of Appeals for the Seventh Circuit has rendered a decision so far departed from the accepted and usual

course of judicial proceedings, i.e. created a new probable cause to arrest standard sua sponte wherein the accused had been acquitted, that the Decision enters the sphere of influence concerning federal judicial legislation of state law. By declaring a new probable cause to arrest standard the lower Court circumvented ruling on other arguments propounded by litigants, questions concerning: a) The extent of a witnesses religious freedom to affirm a written declaration rather than to swear to the truth of the matters stated; b) The First Amendment guarantee of protecting an individual's right to petition his government for redress of grievances which may involve "physical contact in a courtroom between a police officer and..." a process server; c) Will the Fourteenth Amendment offer protection to Christian activists whose First and Fourth Amendment protected rights were violated?

QUESTION 7

Was a state standard of individual liability to atone for wrongful arrest breached by summary dismissal of this civil rights violation action?

Petitioner Currier's collateral conviction of the second count of "Disorderly Conduct" has allowed respondents to argue that probable cause to arrest was established for the initial arrest by that conviction, notwithstanding acquittal on the initial count. Petitioners, on the other hand, have argued that the defendant police officers made subsequent arrests, after the initial wrongful arrest, with discrimination and purpose to bolster and lend credibility to the wrongful arrest. An arrest that petitioners have claimed was prompted by vindictiveness against known radicals.

Petitioner Currier's criminal trial jury decided that the arresting officer fabricated violence, i.e. "a punch in the

kidney with fist and papers", when they acquitted him of that initial Disorderly Conduct charge.

Acquittal of that initial arrest charge supports petitioners' claim that fraud in the inducement, by fabricating grounds to issue the initial arrest Criminal Complaint Warrant, is a distinct possibility.

Petitioners have argued on page 6 of their PETITION FOR REHEARING that: "Plaintiffs have alleged 'manufactured evidence', 'false statements in police reports and criminal complaints', 'testifying falsely at the trial', and have claimed conspiracy to cover up police culpability." These allegations were shown to have been made in the original pleadings and that those claims are "ripe for adjudication", contrary to respondents' position that these claims "were fully litigated in state courts."

And on page 8 of that PETITION FOR

REHEARING it was pointed out that:
"...parties being precluded must have had a fair opportunity procedurally, substantially, and evidentially to litigate their claims in the first proceeding and plaintiffs actually lack on all three of those qualifications for collateral estoppal. See Crowell v. Heritage Mutual Insurance Co., 118 Wis.2d 120, __, 346 N.W.2d 327, 331(Ct.App. 1984)." This has not been addressed by the respondent or the lower Court.

The PETITION FOR REHEARING on page 9 showed that: "In Wisconsin collateral fraud destroys the effect of a conviction on the issue of probable cause...Tarantino v. Griebel, 9 Wis.2d 37, __, 100 N.W.2d 350, 352 - 3(Ct.App. 1960)...The controlling case in Wisconsin continues to recognize that perjury or other corrupt motive will destroy collateral [conviction]...Krieg v. Dayton-Hudson Corp., 104 Wis.2d 445, 464, 311 N.W.2d 305..."

And on page 10 of the PETITION FOR REHEARING it was demonstrated that: "The second, third, and fourth tests for issue preclusion established by the doctrine explained in Scherer v. Belkema, 840 F.2d 437, 442(7th Cir. 1988), can not apply in this particular instance, as argued in litigants' briefs (brief cites omitted)". These arguments were not addressed by respondent or the lower Court.

Petitioners have argued in each of their pleadings that the standard set by Wisconsin courts in Wallner v. Fidelity and Deposit Co. of Maryland, 253 Wis. 66, 70, 33 N.W.2d 215, 216(1948) still rules in applying to this case. Wallner said: "The rule is that when an authority given by law is exceeded, the officer loses the benifit of his jurisdiction, and the law holds him as a trespasser ab initio although to a certain extent he acted under the authority given." This concept

was also omitted from respondents' or the lower Court's written considerations.

Sgt. Baldridge's subsequent arrests would become a nullity under the Wisconsin "rule" of Wallner, id., if collateral fraud and purjury could be presented to and determined by fact finders at a trial on the issues. Petitioners are confident that they could easily demonstrate this to be the case to a jury.

The lower Court avoided addressing these arguments by creating a new standard for probable cause to arrest for Wisconsin Statute 947.01!

QUESTION 2

Does an appellate court have power to set a new standard for probable cause to arrest for a criminal charge wherein the accused was acquitted?

An appellate ruling on the issues presented to the lower Court was obviated by the Court's decision, sua sponte, that

probable cause to arrest was obvious at petitioner Currier's initial arrest. Visonary perspective of the scene of the crime (February 19, 1986) aided the Court in determining that Currier's conduct fell within the probable cause criteria that Wisconsin district attorneys should use as grounds to issue a criminal complaint for Disorderly Conduct. The lower Court ruled that:

> "...any physical contact within a courtroom between a police officer and a private citizen would 'tend to cause or provoke a disturbance",..."

And this then is now added to the "or otherwise disorderly conduct..." criteria that is to be construed by prosecuting attorneys when deciding whether or not a complaining witness has sufficient evidence to sustain a charge under §947.01 Wis. Stat., and thereupon issue a criminal complaint.

However, as petitioner pointed out on page 14 of the PETITION FOR REHEARING:

"...the Court's newly adopted standard for probable cause to arrest under §947. 01 Wis. Stat. cannot apply to Currier. The probable cause standard that existed at the time the warrant was issued, February 20th, 1986, must be used as a reference now."..."Whatever sufficiency test was used by the Waukesha County Assistant District Attorney to determine if probable cause existed to charge Currier, if false swearing influenced his belief, then the probable cause is destroyed." Tarantino, id. at 353, Krieg, id. at 464

QUESTION 3

Has the Appellate Court's refusal to consider unsworn testimonials of Christian activists deprived petitioners of due process of law?

This plea for writ of certiorari is based in part upon the lower Appellate Court's written Decision wherein it was claimed:

"Currier has failed to come forward with sufficient evidence that could support an element of his claim for which he would bear the burden of proof at trial."!

Within their PETITION FOR REHEARING to the lower Court, petitioners showed the Court that it was already established in this case file record, by trial court transcript, asseverations, and memorandum argument, that there is a genuine issue of fact in dispute which must be addressed by a fact finder. I.e., the PETITION FOR REHEARING on page 5 states: "Plaintiffs affidavits have established that there is a 'genuine' issue in dispute that, if presented as evidence to a jury, would impugn defendants' allegation that violence prompted [the arrest]". This statement was backed up by excerpts taken from the transcripts of petitioners criminal trials, and from "ASSEVERATION" testimonials (in lieu of affidavits), displayed in the appendix, which allege that the arresting officer, et al, was

lying when he swore to the district attorney who issued the Criminal Complaint that the accused (now the petitioner) had "punched me in the kidney."

The lower Court was apprised in the PETITION FOR REHEARING, page 6 - 7, that: "A genuine factual issue is one that properly can be reached only by a finder of fact. See Anderson v. Liberty Lobby, Inc., 447 U.S. 242, 250 (1986)"... and: "The application of fraud to support a seizure arrest, and the subsequent false swearing to produce a warrant, are available as testimony evidence that is planned for jury presentation." The lower Appellate Court did not address any of these issues when denying the rehearing.

Also not addressed was petitioners' question to the lower Court, on page 10 of the PETITION FOR REHEARING: "Can a court ignore asseverations in lieu of affidavits (on religious grounds) without declaring for the record, the reason

for disallowing them?"...and "Defendants' have provided no affidavits in opposition to plaintiffs' exhibits. Plaintiffs' Exhibit A and B (asseverations in lieu of affidavits) show that two eye witnesses have contradicted the sworn statements by Sgt. Baldridge regarding his cause to arrest Currier and Braun."

Because the lower Appellate Court has failed to address this question, i.e. whether or not petitioners' "ASSEVERATION"(s) were rejected as incompetent testimonials, not qualified for consideration in making their determination, and because it is clear that petitioners' arguments within their PETITION FOR REHEARING clearly meet the standard for reversal and remand for trial, it becomes apparent that the lower Court rejected petitioners' non-party eye witness claims proffered within said "ASSEVERATION"(s).

The issue that is now before this Court, therefore, is to determine whether

or not a so called "asseveration", absent sworn declaration, can be precluded from consideration when a court decides whether or not dismissal on summary judgment is appropriate.

Petitioners and their witnesses have a right to know what rules of law will be applied to them in the future, i.e. if asseverations that are entered within a case file in lieu of affidavits, can be precluded from consideration due to absense of sworn declaration.

QUESTION 4

Can a process server expect to receive equal protection of the law, i.e. against "unreasonable seizure" by government agents, and the unimpeded "petition for redress" consideration that has been offered to others?

Petitioner Currier was dutifully serving court process papers upon the

previously reluctant defendant, Sgt. Charles Baldridge, when that affected police officer retaliated at the moment of service by placing the process server under arrest. The grounds for that arrest were premised on violence, which is the "touching" upon which the future of this case rests. It is clear that the alleged "disturbance" among the municipal courtroom spectators of this confrontation was generated by the arrest of the process server, not the fact that a policeman was served with process papers.

The circuit court branch for which Currier was serving process is in the same building to which he was transported and jailed after his arrest. Criminal charges were placed against petitioners without their consultation. In fact, they were not apprised of the charges brought against them until the duty judge read those charges to them as they stood before him, shackled and in prison

uniform the following day. After challenging the intake court's jurisdiction, Currier was reconfined and, after failing in an attempt from his jail cell to initiate a John Doe proceeding regarding his groundless arrest, he became ill and after spending 23 days in jail, he was hospitalized for a jail induced illness.

After prevailing on the majority of criminal charges brought against them, petitioners filed this civil rights violation action pro se, under the assumption that a process server could expect the same guaranteed protection of rights as an ordinary citizen.

Petitioners were surprised when the Federal District Court ruled that:

> "...none of the plaintiffs were exercising their own rights to petition and they cannot maintain this claim (First Amendment rights violations) on behalf of a third party."

This issue was argued extensively in opposing briefs but not addressed by the

lower Appellate Court whose new probable cause to arrest standart obviated a ruling on those Fourth Amendment protection questions.

This case is unique in the history of published court decisions addressing seizure of a process server. None on record address the viability of a seizure arrest of a process server by the person upon whom service was made.

Petitioners and their activist associates frequently avail themselves the use of §801.10(1) Wis. Stat. to serve process papers in various court actions. Petitioners are now unsure of what, if any, protection they may anticipate from the courts; if not from the very court circuit for which they are acting to give that court jurisdiction, then are they also precluded from seeking redress of grievance, brought about by perceived civil rights violations, in a feceral court action because of their status as

an officer of a state court?

As it appears now, a process server can not expect First Amendment guaranteed protection in the realm of petition for redress of grievance. And the unlawful seizure of a process server claim will be very difficult to sustain because of the liberal treatment allowed for establishing grounds of probable cause to arrest for the crime of Disorderly Conduct.

Petitioners adjure this Court to recognize its responsibility to address these issues and clarify the areas of confusion generated by this action.

CONCLUSION

For the reasons set forth above, a writ of certiorari should issue to review the judgment and opinion of the Court of of Appeals for the Seventh Circuit in this matter.

If this Court elects not to address

the issues presented herein at the present time, it is requested that the writ issue and the matter be remanded to the Court of Appeals for the Seventh Circuit for redetermination of the issues not addressed as shown herein.

DATED: February ___, 1991.

Respectfully submitted,

_____

William E. Currier, pro se

_____

Robert C. Braun, pro se